

## **Washington State Statutes Concerning Derelict and Abandoned Vessels**

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**Findings. (Effective January 1, 2003.)** The legislature finds that there has been an increase in the number of derelict and abandoned vessels that are either grounded or anchored upon publicly or privately owned submerged lands. These vessels are public nuisances and safety hazards as they often pose hazards to navigation, detract from the aesthetics of Washington's waterways, and threaten the environment with the potential release of hazardous materials. The legislature further finds that the costs associated with the disposal of derelict and abandoned vessels are substantial, and that in many cases there is no way to track down the current vessel owners in order to seek compensation. As a result, the costs associated with the removal of derelict vessels becomes a burden on public entities and the taxpaying public.

[2002 c 286 § 1.]

**RCW 79.100.010**

**Definitions. (Effective January 1, 2003.)**

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Abandoned vessel" means the vessel's owner is not known or cannot be located, or if the vessel's owner is known and located but is unwilling to take control of the vessel, and the vessel has been left, moored, or anchored in the same area without the express consent, or contrary to the rules, of the owner, manager, or lessee of the aquatic lands below or on which the vessel is located for either a period of more than thirty consecutive days or for more than a total of ninety days in any three hundred sixty-five day period. For the purposes of this subsection (1) only, "in the same area" means within a radius of five miles of any location where the vessel was previously moored or anchored on aquatic lands.

(2) "Aquatic lands" means all tidelands, shorelands, harbor areas, and the beds of navigable waters, including lands owned by the state and lands owned by other public or private entities.

(3) "Authorized public entity" includes any of the following: The department of natural resources; the department of fish and wildlife; the parks and recreation commission; a metropolitan park district; a port district; and any city, town, or county with ownership, management, or jurisdiction over the aquatic lands where an abandoned or derelict vessel is located.

(4) "Department" means the department of natural resources.

(5) "Derelict vessel" means the vessel's owner is known and can be located, and exerts control of a vessel that:

(a) Has been moored, anchored, or otherwise left in the waters of the state or on public property contrary to RCW 79.01.760 or rules adopted by an authorized public entity;

(b) Has been left on private property without authorization of the owner; or

(c) Has been left for a period of seven consecutive days, and:

(i) Is sunk or in danger of sinking;

(ii) Is obstructing a waterway; or

(iii) Is endangering life or property.

(6) "Owner" means any natural person, firm, partnership, corporation, association, government entity, or organization that has a lawful right to possession of a vessel by purchase, exchange, gift, lease, inheritance, or legal action whether or not the vessel is subject to a security interest.

(7) "Vessel" has the same meaning as defined in RCW 53.08.310.

[2002 c 286 § 2.]

#### **RCW 79.100.020**

##### **Chapter not exclusive remedy. (*Effective January 1, 2003.*)**

This chapter is not intended to limit or constrain the ability and authority of the authorized public entities to enact and enforce ordinances or other regulations relating to derelict and abandoned vessels, or to take any actions authorized by federal or state law in responding to derelict or abandoned vessels. This chapter is also not intended to be the sole remedy available to authorized public entities against the owners of derelict and abandoned vessels.

[2002 c 286 § 3.]

#### **RCW 79.100.030**

##### **Authority of authorized public entity -- Owner retains primary responsibility. (*Effective January 1, 2003.*)**

(1) An authorized public entity has the authority, subject to the processes and limitations of this chapter, to store, strip, use, auction, sell, salvage, scrap, or dispose of an abandoned or derelict vessel found on or above aquatic lands within the jurisdiction of the authorized public entity. A vessel disposal must be done in an environmentally sound manner and in accordance with all federal, state, and local laws, including the state solid waste disposal provisions provided for in chapter 70.95 RCW. Scuttling or sinking of a vessel is only permissible after obtaining the express permission of the owner or owners of the aquatic lands below where the scuttling or sinking would occur, and obtaining all necessary state and federal permits or licenses.

(2) The primary responsibility to remove a derelict or abandoned vessel belongs to the owner, operator, or lessee of the moorage facility or the aquatic lands where the vessel is located. If the authorized public entity with the primary responsibility is unwilling or unable to exercise the authority granted by this section, it may request the department to assume the authorized public entity's authority for a particular vessel. The department may at its discretion assume the authorized public entity's authority for a particular vessel after being requested to do so. For vessels not at a moorage facility, an authorized public entity with jurisdiction over the aquatic lands where the vessel is located may, at its discretion, request to assume primary responsibility for that particular vessel from the owner of the aquatic lands where the vessel is located.

(3) The authority granted by this chapter is permissive, and no authorized public entity has a duty to exercise the authority. No liability attaches to an authorized public entity that chooses not to exercise this authority.

[2002 c 286 § 4.]

#### **RCW 79.100.040**

##### **Obtaining custody of vessel. (*Effective January 1, 2003.*)**

(1) Prior to exercising the authority granted in RCW 79.100.030, the authorized public entity must first obtain custody of the vessel. To do so, the authorized public entity must:

(a) Mail notice of its intent to obtain custody, at least twenty days prior to taking custody, to the last known address of the previous owner to register the vessel in any state or with the federal government and to any lien holders or secured interests on record. A notice need not be sent to the purported owner or any other person whose interest in the vessel is not recorded with a state or federal agency;

(b) Post notice of its intent clearly on the vessel for thirty days and publish its intent at least once, more than ten days but less than twenty days prior to taking custody, in a newspaper of general circulation for the county in which the vessel is located; and

(c) Post notice of its intent on the department's internet web site on a page specifically designated for such notices. If the authorized public entity is not the department, the department must facilitate the internet posting.

(2) All notices sent, posted, or published in accordance with this section must, at a minimum, explain the intent of the authorized public entity to take custody of the vessel, the rights of the authorized public entity after taking custody of the vessel as provided in RCW 79.100.030, the procedures the owner must follow in order to avoid custody being taken by the authorized public entity, the procedures the owner must follow in order to reclaim possession after custody is taken by the authorized public entity, and the financial liabilities that the owner may incur as provided for in RCW 79.100.060.

(3) If a vessel is in immediate danger of sinking, breaking up, or blocking navigational channels, and the owner of the vessel cannot be located or is unwilling to assume responsibility for the vessel, an authorized public entity may tow, beach, or otherwise take temporary possession of the vessel. Before taking temporary possession of the vessel, the authorized public entity must make reasonable attempts to consult with the department and the United States coast guard to ensure that other remedies are not available. The basis for taking temporary possession of the vessel must be set out in writing by the authorized public entity within seven days of taking action and be submitted to the owner, if known, as soon thereafter as is reasonable. Immediately after taking possession of the vessel, the authorized public entity must initiate the notice provisions in subsection (1) of this section. The authorized public entity must complete the notice requirements of subsection (1) of this section before using or disposing of the vessel as authorized in RCW 79.100.050.

[2002 c 286 § 5.]

#### **RCW 79.100.050**

##### **Use or disposal of vessel. (*Effective January 1, 2003.*)**

(1) After taking custody of a vessel, the authorized public entity may use or dispose of the vessel in any appropriate and environmentally sound manner without further notice to any owners, but must give preference to uses that derive some monetary benefit from the vessel, either in whole or in scrap. If no value can be derived from the vessel, the authorized public entity must give preference to the least costly, environmentally sound, reasonable disposal option. Any disposal operations must be consistent with the state solid waste disposal provisions provided for in chapter 70.95 RCW.

(2) If the authorized public entity chooses to offer the vessel at a public auction, either a minimum bid may be set or a letter of credit may be required, or both, to discourage future reabandonment of the vessel.

(3) Proceeds derived from the sale of the vessel must first be applied to any administrative costs that are incurred by the authorized public entity during the notification procedures set forth in RCW 79.100.040, removal and disposal costs, and costs associated with environmental damages directly or indirectly caused by the vessel. If the proceeds derived from the vessel exceed all administrative costs, removal and disposal costs, and costs associated with environmental damages directly or indirectly caused by the vessel, the remaining moneys must be applied to satisfying any liens registered against the vessel.

(4) Any value derived from a vessel greater than all liens and costs incurred reverts to the derelict vessel removal account established in RCW 79.100.100.

[2002 c 286 § 6.]

#### **RCW 79.100.060**

##### **Reimbursement for costs. (Effective January 1, 2003.)**

(1) The owner of an abandoned or derelict vessel is responsible for reimbursing an authorized public entity for all reasonable and auditable costs associated with the removal or disposal of the owner's vessel under this chapter. These costs include, but are not limited to, costs incurred exercising the authority granted in RCW 79.100.030, all administrative costs incurred by the authorized public entity during the procedure set forth in RCW 79.100.040, removal and disposal costs, and costs associated with environmental damages directly or indirectly caused by the vessel.

(2) Reimbursement for costs may be sought from an owner who is identified subsequent to the vessel's removal and disposal.

(3) If the full amount of all costs due to the authorized public entity under this chapter is not paid to the authorized public entity within thirty days after first notifying the responsible parties of the amounts owed, the authorized public entity or the department may bring an action in any court of competent jurisdiction to recover the costs, plus reasonable attorneys' fees and costs incurred by the authorized public entity.

[2002 c 286 § 7.]

#### **RCW 79.100.070**

##### **Contract with private company/individual. (Effective January 1, 2003.)**

An authorized public entity may enter into a contract with a private company or individual to carry out the authority granted in this chapter.

[2002 c 286 § 8.]

#### **RCW 79.100.080**

##### **Chapter not exclusive. (Effective January 1, 2003.)**

The rights granted by this chapter are in addition to any other legal rights an authorized public entity may have to obtain title to, remove, recover, sell, or dispose of an abandoned or derelict vessel, and in no way does this chapter alter those rights, or affect the priority of other liens on a vessel.

[2002 c 286 § 9.]

**RCW 79.100.090**

**Contest custody/reimbursement -- Lawsuit. (*Effective January 1, 2003.*)**

A person seeking to redeem a vessel that is in the custody of an authorized public entity may commence a lawsuit to contest the authorized public entity's decision to take custody of the vessel or to contest the amount of reimbursement owed. The lawsuit must be commenced in the superior court of the county in which the vessel existed when custody was taken by the authorized public entity. The lawsuit must be commenced within twenty days of the date the authorized public entity took custody of the vessel under RCW 79.100.040, or the right to a hearing is deemed waived and the vessel's owner is liable for any costs owed the authorized public entity. In the event of litigation, the prevailing party is entitled to reasonable attorneys' fees and costs.

[2002 c 286 § 10.]

**RCW 79.100.100**

**Derelict vessel removal account. (*Effective January 1, 2003.*)**

(1) The derelict vessel removal account is created in the state treasury. All receipts from RCW 79.100.050 and 79.100.060 and those moneys specified in RCW 88.02.030 and 88.02.050 must be deposited into the account. Moneys in the account may only be spent after appropriation. Expenditures from the account shall be used by the department to reimburse authorized public entities for seventy-five percent of the total reasonable and auditable administrative, removal, disposal, and environmental damage costs of abandoned or derelict vessels when the previous owner is either unknown after a reasonable search effort or insolvent. During the 2001-2003 biennium, up to forty percent of the expenditures from the account may be used for administrative expenses of the department of licensing and department of natural resources in implementing this chapter. In each subsequent biennium, up to twenty percent of the expenditures from the account may be used for administrative expenses of the department of licensing and department of natural resources in implementing this chapter.

(2) If the balance of the account reaches one million dollars as of March 1st of any year, the department must notify the department of licensing and the collection of any fees associated with this account must be suspended for the following fiscal year.

(3) Priority for use of this account is for the removal of derelict and abandoned vessels that are in danger of sinking, breaking up, or blocking navigation channels, or that present environmental risks such as leaking fuel or other hazardous substances. The department must develop criteria, in the form of informal guidelines, to prioritize removal projects associated with this chapter, but may not consider whether the applicant is a state or local entity when prioritizing. The guidelines must also include guidance to the authorized public entities as to what removal activities and associated costs are reasonable and eligible for reimbursement.

(4) The department must keep all authorized public entities apprized of the balance of the derelict vessel removal account and the funds available for reimbursement. The guidelines developed by the department must also be made available to the other authorized public entities. This subsection (4) must be satisfied by utilizing the least costly method, including maintaining the information on the department's internet web site, or any other cost-effective method.

(5) An authorized public entity may contribute its twenty-five percent of costs that are not eligible for reimbursement by using in-kind services, including the use of existing staff, equipment, and volunteers.

(6) This chapter does not guarantee reimbursement for an authorized public entity. Authorized public entities seeking certainty in reimbursement prior to taking action under this chapter may first notify the department of their proposed action and the estimated total costs. Upon notification by an authorized public entity, the department must make the authorized public entity aware of the status of the fund and the likelihood of reimbursement being available. The department may offer technical assistance and assure reimbursement for up to two years following the removal action if an assurance is appropriate given the balance of the fund and the details of the proposed action.

[2002 c 286 § 11.]

**RCW 79.100.900**

**Severability -- 2002 c 286.**

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[2002 c 286 § 25.]

**RCW 79.100.901**

**Effective date -- 2002 c 286.**

This act takes effect January 1, 2003.

[2002 c 286 § 26.]

## **Port Moorage Facilities**

### **RCW 53.08.310**

#### **Moorage facilities -- Definitions.**

Unless the context clearly requires otherwise, the definitions in this section apply throughout this section and RCW 53.08.320.

(1) "Port charges" mean charges of a moorage facility operator for moorage and storage, and all other charges owing or to become owing under a contract between a vessel owner and the moorage facility operator, or under an officially adopted tariff including, but not limited to, costs of sale and related legal expenses.

(2) "Vessel" means every species of watercraft or other artificial contrivance capable of being used as a means of transportation on water and which does not exceed two hundred feet in length. "Vessel" includes any trailer used for the transportation of watercraft.

(3) "Moorage facility" means any properties or facilities owned or operated by a moorage facility operator which are capable of use for the moorage or storage of vessels.

(4) "Moorage facility operator" means any port district, city, town, metropolitan park district, or county which owns and/or operates a moorage facility.

(5) "Owner" means every natural person, firm, partnership, corporation, association, or organization, or agent thereof, with actual or apparent authority, who expressly or impliedly contracts for use of a moorage facility.

(6) "Transient vessel" means a vessel using a moorage facility and which belongs to an owner who does not have a moorage agreement with the moorage facility operator. Transient vessels include, but are not limited to: Vessels seeking a harbor of refuge, day use, or overnight use of a moorage facility on a space-as-available basis.

[1986 c 260 § 1; 1983 c 188 § 1.]

#### **NOTES:**

**Construction -- Savings -- 1983 c 188:** "Nothing contained in RCW 53.08.310 and 53.08.320 may be construed as a limitation of any rights, privileges, or remedies previously existing under any applicable laws of port districts, cities, towns, metropolitan park districts, or counties." [1983 c 188 § 3.]

**Severability -- 1983 c 188:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 188 § 5.]

### **RCW 53.08.320**

#### **Moorage facilities -- Rules authorized -- Port charges, delinquency -- Abandoned vessels, public sale. (Effective January 1, 2003.)**

A moorage facility operator may adopt all rules necessary for rental and use of moorage facilities and for the expeditious collection of port charges. The rules may also establish procedures for the enforcement of



these rules by port district, city, county, metropolitan park district or town personnel. The rules shall include the following:

(1) Procedures authorizing moorage facility personnel to take reasonable measures, including the use of chains, ropes, and locks, or removal from the water, to secure vessels within the moorage facility so that the vessels are in the possession and control of the moorage facility operator and cannot be removed from the moorage facility. These procedures may be used if an owner mooring or storing a vessel at the moorage facility fails, after being notified that charges are owing and of the owner's right to commence legal proceedings to contest that such charges are owing, to pay the port charges owed or to commence legal proceedings. Notification shall be by registered mail to the owner at his or her last known address. In the case of a transient vessel, or where no address was furnished by the owner, the moorage facility operator need not give such notice prior to securing the vessel. At the time of securing the vessel, an authorized moorage facility employee shall attach to the vessel a readily visible notice. The notice shall be of a reasonable size and shall contain the following information:

(a) The date and time the notice was attached;

(b) A statement that if the account is not paid in full within ninety days from the time the notice is attached, the vessel may be sold at public auction to satisfy the port charges; and

(c) The address and telephone number where additional information may be obtained concerning release of the vessel.

After a vessel is secured, the operator shall make a reasonable effort to notify the owner by registered mail in order to give the owner the information contained in the notice.

(2) Procedures authorizing moorage facility personnel at their discretion to move moored vessels ashore for storage within properties under the operator's control or for storage with private persons under their control as bailees of the moorage facility, if the vessel is, in the opinion of port personnel a nuisance, if the vessel is in danger of sinking or creating other damage, or is owing port charges. Costs of any such procedure shall be paid by the vessel's owner. If the owner is not known, or unable to reimburse the moorage facility operator for the costs of these procedures, the mooring facility operators may seek reimbursement of seventy-five percent of all reasonable and auditable costs from the derelict vessel removal account established in RCW 79.100.100.

(3) If a vessel is secured under subsection (1) of this section or moved ashore under subsection (2) of this section, the owner who is obligated to the moorage facility operator for port charges may regain possession of the vessel by:

(a) Making arrangements satisfactory with the moorage facility operator for the immediate removal of the vessel from the moorage facility or for authorized moorage; and

(b) Making payment to the moorage facility operator of all port charges, or by posting with the moorage facility operator a sufficient cash bond or other acceptable security, to be held in trust by the moorage facility operator pending written agreement of the parties with respect to payment by the vessel owner of the amount owing, or pending resolution of the matter of the charges in a civil action in a court of competent jurisdiction. After entry of judgment, including any appeals, in a court of competent jurisdiction, or after the parties reach agreement with respect to payment, the trust shall terminate and the

moorage facility operator shall receive so much of the bond or other security as is agreed, or as is necessary to satisfy any judgment, costs, and interest as may be awarded to the moorage facility operator. The balance shall be refunded immediately to the owner at his or her last known address.

(4) If a vessel has been secured by the moorage facility operator under subsection (1) of this section and is not released to the owner under the bonding provisions of this section within ninety days after notifying or attempting to notify the owner under subsection (1) of this section, the vessel shall be conclusively presumed to have been abandoned by the owner.

(5) If a vessel moored or stored at a moorage facility is abandoned, the moorage facility operator may, by resolution of its legislative authority, authorize the public sale of the vessel by authorized personnel to the highest and best bidder for cash as prescribed by this subsection (5). Either a minimum bid may be established or a letter of credit may be required, or both, to discourage the future reabandonment of the vessel.

(a) Before the vessel is sold, the owner of the vessel shall be given at least twenty days' notice of the sale in the manner set forth in subsection (1) of this section if the name and address of the owner is known. The notice shall contain the time and place of the sale, a reasonable description of the vessel to be sold, and the amount of port charges owed with respect to the vessel. The notice of sale shall be published at least once, more than ten but not more than twenty days before the sale, in a newspaper of general circulation in the county in which the moorage facility is located. Such notice shall include the name of the vessel, if any, the last known owner and address, and a reasonable description of the vessel to be sold. The moorage facility operator may bid all or part of its port charges at the sale and may become a purchaser at the sale.

(b) Before the vessel is sold, any person seeking to redeem an impounded vessel under this section may commence a lawsuit in the superior court for the county in which the vessel was impounded to contest the validity of the impoundment or the amount of the port charges owing. Such lawsuit must be commenced within ten days of the date the notification was provided pursuant to subsection (1) of this section, or the right to a hearing shall be deemed waived and the owner shall be liable for any port charges owing the moorage facility operator. In the event of litigation, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

(c) The proceeds of a sale under this section shall first be applied to the payment of port charges. The balance, if any, shall be paid to the owner. If the owner cannot in the exercise of due diligence be located by the moorage facility operator within one year of the date of the sale, the excess funds from the sale shall revert to the derelict vessel removal account established in RCW 79.100.100. If the sale is for a sum less than the applicable port charges, the moorage facility operator is entitled to assert a claim for a deficiency.

(d) In the event no one purchases the vessel at a sale, or a vessel is not removed from the premises or other arrangements are not made within ten days of sale, title to the vessel will revert to the moorage facility operator.

(6) The rules authorized under this section shall be enforceable only if the moorage facility has had its tariff containing such rules conspicuously posted at its moorage facility at all times.

[2002 c 286 § 23; 1986 c 260 § 2; 1985 c 7 § 124; 1983 c 188 § 2.]

**NOTES:**

**Severability -- Effective date -- 2002 c 286:** See RCW 79.100.900 and 79.100.901.

**Severability -- Construction -- Savings -- 1983 c 188:** See notes following RCW 53.08.310.

## **Private Moorage Facilities**

### **RCW 88.26.010**

#### **Definitions.**

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Charges" means charges of a private moorage facility operator for moorage and storage, all other charges owing to or that become owing under a contract between a vessel owner and the private moorage facility operator, or any costs of sale and related legal expenses for implementing RCW 88.26.020.

(2) "Vessel" means every watercraft used or capable of being used as a means of transportation on the water. "Vessel" includes any trailer used for the transportation of watercraft.

(3) "Private moorage facility" means any properties or facilities owned or operated by a private moorage facility operator that are capable of use for the moorage or storage of vessels.

(4) "Private moorage facility operator" means every natural person, firm, partnership, corporation, association, organization, or any other legal entity, employee, or their agent, that owns or operates a private moorage facility. Private moorage facility operation does not include a "moorage facility operator" as defined in RCW 53.08.310.

(5) "Owner" means every natural person, firm, partnership, corporation, association, or organization, or their agent, with actual or apparent authority, who expressly or impliedly contracts for use of a moorage facility.

(6) "Transient vessel" means a vessel using a private moorage facility and that belongs to an owner who does not have a moorage agreement with the private moorage facility operator. Transient vessels include, but are not limited to, vessels seeking a harbor or refuge, day use, or overnight use of a private moorage facility on a space-as-available basis.

[1993 c 474 § 1.]

### **RCW 88.26.020**

#### **Securing vessels -- Notice -- Moving vessels ashore -- Regaining possession -- Abandoned vessels -- Public sale.**

(1) Any private moorage facility operator may take reasonable measures, including the use of chains, ropes, and locks, or removal from the water, to secure vessels within the private moorage facility so that the vessels are in the possession and control of the operator and cannot be removed from the facility. These procedures may be used if an owner mooring or storing a vessel at the facility fails, after being notified that charges are owing and of the owner's right to commence legal proceedings to contest that such charges are owing, to pay charges owed or to commence legal proceedings. Notification shall be by two separate letters, one sent by first class mail and one sent by registered mail to the owner and any lienholder of record at the last known address. In the case of a transient vessel, or where no address was furnished by the owner, the operator need not give notice prior to securing the vessel. At the time of securing the vessel, an operator shall attach to the vessel a readily visible notice. The notice shall be of a reasonable size and shall contain the following information:

(a) The date and time the notice was attached;

(b) A statement that if the account is not paid in full within ninety days from the time the notice is attached the vessel may be sold at public auction to satisfy the charges; and

(c) The address and telephone number where additional information may be obtained concerning release of the vessel.

After a vessel is secured, the operator shall make a reasonable effort to notify the owner and any lienholder of record by registered mail in order to give the owner the information contained in the notice.

(2) A private moorage facility operator, at his or her discretion, may move moored vessels ashore for storage within properties under the operator's control or for storage with a private person under their control as bailees of the private moorage facility, if the vessel is, in the opinion of the operator, a nuisance, in danger of sinking or creating other damage, or is owing charges. The costs of any such procedure shall be paid by the vessel's owner.

(3) If a vessel is secured under subsection (1) of this section or moved ashore under subsection (2) of this section, the owner who is obligated to the private operator for charges may regain possession of the vessel by:

(a) Making arrangements satisfactory with the operator for the immediate removal of the vessel from the facility or for authorized moorage; and

(b) Making payment to the operator of all charges, or by posting with the operator a sufficient cash bond or other acceptable security, to be held in trust by the operator pending written agreement of the parties with respect to payment by the vessel owner of the amount owing, or pending resolution of the matter of the charges in a civil action in a court of competent jurisdiction. After entry of judgment, including any appeals, in a court of competent jurisdiction, or after the parties reach agreement with respect to payment, the trust shall terminate and the operator shall receive so much of the bond or other security as agreed, or as is necessary, to satisfy any judgment, costs, and interest as may be awarded to the operator. The balance shall be refunded immediately to the owner at the last known address.

(4) If a vessel has been secured by the operator under subsection (1) of this section and is not released to the owner under the bonding provisions of this section within ninety days after notifying or attempting to notify the owner under subsection (1) of this section, the vessel is conclusively presumed to have been abandoned by the owner.

(5) If a vessel moored or stored at a private moorage facility is abandoned, the operator may authorize the public sale of the vessel by authorized personnel to the highest and best bidder for cash as follows:

(a) Before the vessel is sold, the vessel owner and any lienholder of record shall be given at least twenty days' notice of the sale in the manner set forth in subsection (1) of this section if the name and address of the owner is known. The notice shall contain the time and place of the sale, a reasonable description of the vessel to be sold, and the amount of charges owed with respect to the vessel. The notice of sale shall be published at least once, more than ten but not more than twenty days before the sale, in a newspaper of general circulation in the county in which the facility is located. This notice shall include the name of the vessel, if any, the last known owner and address, and a reasonable description of

the vessel to be sold. The operator may bid all or part of its charges at the sale and may become a purchaser at the sale.

(b) Before the vessel is sold, any person seeking to redeem an impounded vessel under this section may commence a lawsuit in the superior court for the county in which the vessel was impounded to contest the validity of the impoundment or the amount of charges owing. This lawsuit must be commenced within sixty days of the date the notification was provided under subsection (1) of this section, or the right to a hearing is deemed waived and the owner is liable for any charges owing the operator. In the event of litigation, the prevailing party is entitled to reasonable attorneys' fees and costs.

(c) The proceeds of a sale under this section shall be applied first to the payment of any liens superior to the claim for charges, then to payment of the charges, then to satisfy any other liens on the vessel in the order of their priority. The balance, if any, shall be paid to the owner. If the owner cannot in the exercise of due diligence be located by the operator within one year of the date of the sale, the excess funds from the sale shall revert to the department of revenue under chapter 63.29 RCW. If the sale is for a sum less than the applicable charges, the operator is entitled to assert a claim for deficiency, however, the deficiency judgment shall not exceed the moorage fees owed for the previous six-month period.

(d) In the event no one purchases the vessel at a sale, or a vessel is not removed from the premises or other arrangements are not made within ten days of sale, title to the vessel will revert to the operator.

(6) The rights granted to a private moorage facility operator under this section are in addition to any other legal rights an operator may have to hold and sell a vessel and in no manner does this section alter those rights, or affect the priority of other liens on a vessel.

[1993 c 474 § 2.]

## **Washington State Parks**

### **RCW 79A.65.010**

#### **Definitions. (Effective January 1, 2003.)**

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Charges" means charges of the commission for moorage and storage, and all other charges related to the vessel and owing to or that become owing to the commission, including but not limited to costs of securing, disposing, or removing vessels, damages to any commission facility, and any costs of sale and related legal expenses for implementing RCW 79A.65.020 and 79A.65.030.
- (2) "Commission" means the Washington state parks and recreation commission.
- (3) "Commission facility" means any moorage facility, as that term is defined in RCW 53.08.310, owned, leased, operated, managed, or otherwise controlled by the commission or by a person pursuant to a contract with the commission.
- (4) "Owner" means a person who has a lawful right to possession of a vessel by purchase, exchange, gift, lease, inheritance, or legal action whether or not the vessel is subject to a security interest, and shall not include the holder of a bona fide security interest.
- (5) "Person" means any natural person, firm, partnership, corporation, association, organization, or any other entity.
- (6)(a) "Registered owner" means any person that is either: (i) Shown as the owner in a vessel certificate of documentation issued by the secretary of the United States department of transportation under 46 U.S.C. Sec. 12103; or (ii) the registered owner or legal owner of a vessel for which a certificate of title has been issued under chapter 88.02 RCW; or (iii) the owner of a vessel registered under the vessel registration laws of another state under which laws the commission can readily identify the ownership of vessels registered with that state.
- (b) "Registered owner" also includes: (i) Any holder of a security interest or lien recorded with the United States department of transportation with respect to a vessel on which a certificate of documentation has been issued; (ii) any holder of a security interest identified in a certificate of title for a vessel registered under chapter 88.02 RCW; or (iii) any holder of a security interest in a vessel where the holder is identified in vessel registration information of a state with vessel registration laws that fall within (a)(iii) of this subsection and under which laws the commission can readily determine the identity of the holder.
- (c) "Registered owner" does not include any vessel owner or holder of a lien or security interest in a vessel if the vessel does not have visible information affixed to it (such as name and hailing port or registration numbers) that will enable the commission to obtain ownership information for the vessel without incurring unreasonable expense.
- (7) "Registered vessel" means a vessel having a registered owner.
- (8) "Secured vessel" means any vessel that has been secured by the commission that remains in the commission's possession and control.

(9) "Unauthorized vessel" means a vessel using a commission facility of any type whose owner has not paid the required moorage fees or has left the vessel beyond the posted time limits, or a vessel otherwise present without permission of the commission.

(10) "Vessel" means every watercraft or part thereof constructed, used, or capable of being used as a means of transportation on the water. It includes any equipment or personal property on the vessel that is used or capable of being used for the operation, navigation, or maintenance of the vessel.

[2002 c 286 § 20; 2000 c 11 § 115; 1994 c 51 § 1. Formerly RCW 88.27.010.]

**NOTES:**

**Severability -- Effective date -- 2002 c 286:** See RCW 79.100.900 and 79.100.901.

**RCW 79A.65.020**

**Securing unauthorized vessels -- Notice -- Claiming vessels -- Abandoned vessels -- Derelict vessel removal account. (*Effective January 1, 2003.*)**

(1) The commission may take reasonable measures, including but not limited to the use of anchors, chains, ropes, and locks, or removal from the water, to secure unauthorized vessels located at or on a commission facility so that the unauthorized vessels are in the possession and control of the commission. At least ten days before securing any unauthorized registered vessel, the commission shall send notification by registered mail to the last registered owner or registered owners of the vessel at their last known address or addresses.

(2) The commission may take reasonable measures, including but not limited to the use of anchors, chains, ropes, locks, or removal from the water, to secure any vessel if the vessel, in the opinion of the commission, is a nuisance, is in danger of sinking or creating other damage to a commission facility, or is otherwise a threat to the health, safety, or welfare of the public or environment at a commission facility. The costs of any such procedure shall be paid by the vessel's owner.

(3) At the time of securing any vessel under subsection (1) or (2) of this section, the commission shall attach to the vessel a readily visible notice or, when practicable, shall post such notice in a conspicuous location at the commission facility in the event the vessel is removed from the premises. The notice shall be of a reasonable size and shall contain the following information:

(a) The date and time the notice was attached or posted;

(b) A statement that the vessel has been secured by the commission and that if the commission's charges, if any, are not paid and the vessel is not removed by . . . . . (the thirty-fifth consecutive day following the date of attachment or posting of the notice), the vessel will be considered abandoned and will be sold at public auction to satisfy the charges;

(c) The address and telephone number where additional information may be obtained concerning the securing of the vessel and conditions for its release; and

(d) A description of the owner's or secured party's rights under this chapter.



(4) With respect to registered vessels: Within five days of the date that notice is attached or posted under subsection (3) of this section, the commission shall send such notice, by registered mail, to each registered owner.

(5) If a vessel is secured under subsection (1) or (2) of this section, the owner, or any person with a legal right to possess the vessel, may claim the vessel by:

(a) Making arrangements satisfactory to the commission for the immediate removal of the vessel from the commission's control or for authorized storage or moorage; and

(b) Making payment to the commission of all reasonable charges incurred by the commission in securing the vessel under subsections (1) and (2) of this section and of all moorage fees owed to the commission.

(6) A vessel is considered abandoned if, within the thirty-five day period following the date of attachment or posting of notice in subsection (3) of this section, the vessel has not been claimed under subsection (5) of this section.

(7) If the owner or owners of a vessel are unable to reimburse the commission for all reasonable charges under subsections (1) and (2) of this section within a reasonable time, the commission may seek reimbursement of seventy-five percent of all reasonable and auditable costs from the derelict vessel removal account established in RCW 79.100.100.

[2002 c 286 § 21; 1994 c 51 § 2. Formerly RCW 88.27.020.]

**NOTES:**

**Severability -- Effective date -- 2002 c 286:** See RCW 79.100.900 and 79.100.901.

**RCW 79A.65.030**

**Sale of abandoned vessels -- Notice -- Redemption of vessels--Use of proceeds -- Disposal of vessels.**  
**(Effective January 1, 2003.)**

(1) The commission may provide for the public sale of vessels considered abandoned under RCW 79A.65.020. At such sales, the vessels shall be sold for cash to the highest and best bidder. The commission may establish either a minimum bid or require a letter of credit, or both, to discourage the future reabandonment of the vessel.

(2) Before a vessel is sold, the commission shall make a reasonable effort to provide notice of sale, at least twenty days before the day of the sale, to each registered owner of a registered vessel and each owner of an unregistered vessel. The notice shall contain the time and place of the sale, a reasonable description of the vessel to be sold, and the amount of charges then owing with respect to the vessel, and a summary of the rights and procedures under this chapter. A notice of sale shall be published at least once, more than ten but not more than twenty days before the sale, in a newspaper of general circulation in the county in which the commission facility is located. This notice shall include: (a) If known, the name of the vessel and the last owner and the owner's address; and (b) a reasonable description of the vessel. The commission may bid all or part of its charges at the sale and may become a purchaser at the sale.

(3) Before a vessel is sold, any person seeking to redeem a secured vessel may commence a lawsuit in the superior court for the county in which the vessel was secured to contest the commission's decision to secure the vessel or the amount of charges owing. This lawsuit shall be commenced within fifteen days of the date the notification was posted under RCW 79A.65.020(3), or the right to a hearing is deemed waived and the owner is liable for any charges owing the commission. In the event of litigation, the prevailing party is entitled to reasonable attorneys' fees and costs.

(4) The proceeds of a sale under this section shall be applied first to the payment of the amount of the reasonable charges incurred by the commission and moorage fees owed to the commission, then to the owner or to satisfy any liens of record or security interests of record on the vessel in the order of their priority. If an owner cannot in the exercise of due diligence be located by the commission within one year of the date of the sale, any excess funds from the sale, following the satisfaction of any bona fide security interest, shall revert to the derelict vessel removal account established in RCW 79.100.100. If the sale is for a sum less than the applicable charges, the commission is entitled to assert a claim for the deficiency against the vessel owner. Nothing in this section prevents any lien holder or secured party from asserting a claim for any deficiency owed the lien holder or secured party.

(5) If no one purchases the vessel at a sale, the commission may proceed to properly dispose of the vessel in any way the commission considers appropriate, including, but not limited to, destruction of the vessel or by negotiated sale. The commission may assert a claim against the owner for any charges incurred thereby. If the vessel, or any part of the vessel, or any rights to the vessel, are sold under this subsection, any proceeds from the sale shall be distributed in the manner provided in subsection (4) of this section.

[2002 c 286 § 22; 2000 c 11 § 116; 1994 c 51 § 3. Formerly RCW 88.27.030.]

#### **NOTES:**

**Severability -- Effective date -- 2002 c 286:** See RCW 79.100.900 and 79.100.901.

#### **RCW 79A.65.040**

##### **Action to recover charges -- Attorneys' fees -- Costs.**

If the full amount of all charges due the commission on an unauthorized vessel is not paid to the commission within thirty days after the date on which notice is affixed or posted under RCW 79A.65.020(3), the commission may bring an action in any court of competent jurisdiction to recover the charges, plus reasonable attorneys' fees and costs incurred by the commission.

[2000 c 11 § 117; 1994 c 51 § 4. Formerly RCW 88.27.040.]

#### **RCW 79A.65.050**

##### **Rights not affected.**

The rights granted to the commission under this chapter are in addition to any other legal rights the commission may have to secure, hold, and sell a vessel and in no manner does this section alter those rights, or affect the priority of other liens on a vessel.

[1994 c 51 § 5. Formerly 88.27.050.]

**RCW 79A.65.900**

**Severability -- 1994 c 51.**

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1994 c 51 § 10. Formerly RCW 88.27.900.]